(3)

In the High Court of Judicature at Bilaspur, C.G.

Writ Petition No. 2751 of 2004

Petitioners : 1.M/S System India Castings, a partnership firm duly registered under the Partnership Act, having office at 9-C, Industrial Area, Bhilai, District Durg.

2. Sushil Kumar Jhamb, aged 67 years, Motilal Nehru Nagar, District Durg.

3. Vikram Jhamb, aged 34 years, son of Sushil Kumar Jhamb, resident of Motilal Nehru Nagar, Bhilai, District Durg.

Versus

Respondents: 1. M/S Corporate Ispat Alloys (P) Limited, works Dhanod, Anjora, registered office 178-A, Industrial Area, Bhilai, District Durg.

2. Jagdish Jaiswal, son of Shalik Ram Jaiswal, 178-A, Industrial Area, Bhilai.

3. M/S Corporate Ispat Alloys (P) Ltd. F/8, MIDC Industrial Area, Hingna Road, Nagpur.

4. First Additional District Judge, Durg, C.G.

Petition under Article 227 of the Constitution of India, 1950

XI-HC-22

(41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP No. 2751/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	07.10.2004 Shri H.B. Agarwal, counsel for the petitioner. None appears on behalf of the Respondents inspite service of notice on them. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 30.07.2004 (Annexure P-2) whereby learned 1st Additional District Judge, Durg rejected the application of the defendant/petitioner herein filed under Section 151 of C.P.C. for allowing him to adduce his evidence. The relevant facts for the disposal of this writ petition are that the respondents herein filed a suit against the petitioner herein for recovery of Rs.3,02,000/-. After closing the evidence by the plaintiffs/respondents herein the suit was fixed for 23.07.2004 for defendant's evidence i.e. the petitioner herein, but on that date neither the defendant nor his witnesses were present in the Court, therefore, his right of evidence was closed. Thereafter, an application under Section 151 of CPC was filed on behalf of the petitioner for giving an opportunity to adduce his evidence, in which it has been mentioned that when the defendant/petitioner herein was coming to the Court for giving his evidence his car became defective on the way, therefore, he could not reach the Court in time. By the time he reached the court at about 12.15 p.m. he was informed that his right of evidence has already been closed and the court work was	

42

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

WP 2751/04

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

suspended on account of death of one advocate namely Shri Tiruvathi, so he could not approach the court. The learned Court below rejected the application of the petitioner on the ground that in all nine opportunities have already been granted to the defendant/petitioner to adduce his evidence but he failed to adduce his evidence. Even the application filed under Section 151 of CPC was not supported by the affidavit.

I have heard the learned counsel for the parties.

Learned counsel for the petitioner submitted that on the date of evidence i.e. on 23.7.2004 when the petitioner was coming to the court to give his evidence his car became defective on the way and by the time he reached to the court at about 12.15 p.m. the court work was already suspended and the evidence was closed, therefore, there was sufficient and genuine cause for not reaching the court when the matter was called out. Counsel further submits that the case against the petitioner is for recovery of more than Rs.3 Lacs and if the petitioner is not allowed to adduce his evidence then serious prejudice will be caused to him. He further submits that the petitioner is ready to pay the cost, if any imposed, for giving the last opportunity to adduce his evidence.

Looking to the facts and grounds taken in the said application and also the fact that the petitioner has not been able to adduce his evidence, the learned trial court, in the interest of justice, ought to have allowed the petitioner to adduce his evidence. Therefore, in view of the above facts and circumstances

43

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 2751/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the case, I am of the opinion that if the petition of the petitioner is allowed and one last opportunity of adducing evidence is given to him subject to payment of Rs.1,000/- cost, the interest of justice will be served.

In the result, the petition of the petitioner is allowed, the order dated 30.07.2004 (Annexure P-2) is hereby set aside and the trial court is directed to record the evidence of the defendant/ petitioner herein subject to payment of cost of Rs.1,000/- and that the petitioner will produce all the evidence on 08.11.2004. It is made clear that no further opportunity for adducing evidence will be granted to the petitioner.

With the aforesaid observations and directions, the petition stands disposed of.

Consequently, M.W.P. No.2425/04 also stands disposed of.

Certified copy as per Rules.

Sd/-
L.C. Bhadoo
Judge

Roshan/Padma

[पीछे देखिये